

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

TERRANCE A. McCAULEY,

Defendant.

ORDER

08-cr-151-bbc

Defendant Terrance McCauley has filed objections to United States Magistrate Judge Stephen Crocker's recommendation that the court deny defendant's motion to suppress the crack cocaine discovered by Matthew Wiza, a Fitchburg, Wisconsin police officer, while conducting a search of defendant. As the magistrate judge noted in his report, this is a close case. I conclude, however, that the magistrate judge is correct: Wiza had probable cause to arrest defendant before he searched him; a full search is permissible in connection with an arrest (whereas a stop on reasonable suspicion would have justified nothing more intrusive than a weapons frisk); and it is immaterial to the validity of the search whether the search occurred before or after defendant was formally arrested.

The magistrate judge gave a thorough and persuasive explanation of the reasons for

the recommendation. Defendant takes issue only with the conclusion that probable cause existed and cites cases in which a stronger case could be made for a finding of probable cause. Defendant notes correctly that the facts in this case are weaker than in the cases he cites, but it does not follow that the facts do not support a finding of probable cause.

I agree with the magistrate judge that Officer Wiza had probable cause to arrest defendant. He was investigating the severe beating of David Neely at an apartment in the location that Neely had given Wiza; the beating had taken place at that residence earlier that evening; when Wiza knocked on the door, the first person to answer was defendant, who fit the barebones description of the man who had restrained Neely; and another man fitting the more detailed description of the man who had done the beating answered Wiza's second knock. These facts and circumstances were sufficient to warrant a prudent person of reasonable caution in believing that defendant had committed an offense.

ORDER

IT IS ORDERED that the magistrate judge's recommendation is ADOPTED and defendant Terrance A. McCauley's motion to suppress the crack cocaine recovered by him

in a search of his person on December 12, 2008 is DENIED.

Entered this 24th day of February, 2010.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge